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10/719,471

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Nicholas S. Huslak

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EXAMINER

RICHARDSON, THOMAS W

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/719,471	<b>Applicant(s)</b> HUSLAK ET AL.	
	<b>Examiner</b> THOMAS RICHARDSON	<b>Art Unit</b> 2444	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6, 9-11 and 14-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 9-11, and 14-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)<br>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)<br>3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>16 July 2009</u> | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date _____<br>5) <input type="checkbox"/> Notice of Informal Patent Application<br>6) <input type="checkbox"/> Other: _____ |
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### **DETAILED ACTION**

Claims 1-4, 6, 9-11, and 14-25 are pending for examination.

Claims 5, 7, 8, 12, and 13 are cancelled.

Claims 1, 15-17, 20, 21, and 24 are amended.

Claims 1-4, 6, 9-11, and 14-25 are rejected.

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1, 15-17, 20, 21, and 24 with respect to cited reference Byrnes (US 2002/0087696) have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims rejected under 35 U.S.C. 103(a) as being unpatentable over US 7 113 479, Wong et al and US 6 594 265, Etorre et al.

4. As per claim 1, Wong teaches a method of providing a network turbo boost service, the method comprising:

receiving in a service provider system one or more turbo boost triggering criteria of a plurality of turbo boost triggering criteria associated with a user (column 5, lines 27-40, where the type of data may determine whether the rate control is turned off);

monitoring, at the service provider, a network for a task that meets an at least one turbo boost triggering criteria of the plurality of turbo boost triggering criteria

(column 5, lines 27-40, where the ARL of the network device may snoop packets to determine what type of data is to be sent); and

if the monitoring results in locating a task that meets the at least one of the turbo boost triggering criteria then automatically invoking by the service provider system the network turbo boost service for the task (column 5, lines 27-40, where if the data type is determined to be high bandwidth, the switch may eliminate the rate control).

Wong does not expressly teach a network and application based trigger for enacting bandwidth increase. Etorre teaches a management system for a network comprising:

a bandwidth increasing criteria including a network-based trigger and an application-based trigger generated by an application provider system separate from the service provider system, the application-based trigger including a request from the application provider system to initiate the turbo boost service (column 17, lines 29-56, where the management server may request to the connection controller to increase bandwidth within the network).

It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize a separate network device including device triggers such as taught by Etorre in a bandwidth increasing system such as taught by Wong. Wong's system generally teaches a network device including a rate control unit. Etorre generally teaches a network monitoring device that that may add or delete bandwidth based on network performance (paragraph 85). It would be beneficial in a network system such as that taught by Wong to utilize an external network monitor such as that taught by Etorre, as Etorre's network monitor allows a unit to send a request for higher bandwidth on a

connection (column 17, lines 35-45). This allows the monitor to dynamically adjust bandwidth within a system and balance traffic within the network.

5. As per claim 3, Wong further teaches the network-based trigger includes at least one of:

detecting an incoming file that is larger than a pre-selected size; and detecting a destination address that is on a list of high transmission rate applications (column 5, lines 43-45, where the rate limiting determination may be made with regard to the subscriber).

6. As per claim 6, Wong further teaches the at least one turbo boost triggering criteria is created by at least one of the user and a service provider (column 5, lines 42-60, where the ISP may control the rate limiting functions).

7. As per claim 9, Wong further teaches the user is an application program (column 5, lines 15-25, where the user orders an HDTV program. It is well known in the art that ordering programs takes place via a local or remote application program).

8. As per claim 10, Wong further teaches the user is user client software (column 5, lines 15-25, where the user orders an HDTV program. It is well known in the art that ordering programs takes place via a software interface).

9. As per claim 11, Wong further teaches the task includes at least one of accessing a website, downloading and uploading data, streaming audio content and streaming video content (column 5, lines 15-25, where the user orders an HDTV program).

10. Claims 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2004/0215806, Brenner et al and US 6 594 265, Etorre et al.

11. As per claim 21, Brenner teaches a computer program product providing a network turbo boost service, the computer program product comprising:

a storage medium readable by a processing circuit and storing instructions for execution by the processing circuit for facilitating a method (claim 16) comprising:

receiving a set of one or more available network turbo boost triggering options, where the set of one or more available network turbo boost triggering options include destination addresses for which high speed transfer will be recommended, and one of being notified when a large incoming file is detected, being notified when a large outgoing file is detected, being notified when a destination address is on a list of high transmission rate applications, and being notified when a request is received from an application that typically requires downloading of application code data, where the application that typically requires downloading of application code data includes service packs, and software updates, where the list of high transmission rate applications includes video conferencing sites and gaming sites, and where the destination addresses include a gaming application address and a video conferencing address (paragraph 20, where the server receives the request and determines information related to that request and the requester);

offering the available network turbo boost triggering options to a user (paragraph 20, where the server offers increased bandwidth to the user);

detecting selection of a network turbo boost triggering option by the user (paragraph 20, where the user preferences are made to the server); and

communicating the selection of the network turbo boost triggering option to a network service provider system (paragraph 20, where the user preferences are made to the server).

Brenner does not expressly teach a network and application based trigger for enacting bandwidth increase. Etorre teaches a management system for a network comprising:

a bandwidth increasing criteria including a network-based trigger and an application-based trigger generated by an application provider system separate from the service provider system, the application-based trigger including a request from the application provider system to initiate the turbo boost service (column 17, lines 29-56, where the management server may request to the connection controller to increase bandwidth within the network).

It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize a separate network device including device triggers such as taught by Etorre in a bandwidth increasing system such as taught by Brenner. Brenner's system generally teaches a network device capable of offering users more bandwidth. Etorre generally teaches a network monitoring device that that may add or delete bandwidth based on network performance (paragraph 85). It would be beneficial in a network system such as that taught by Wong to utilize an external network monitor such as that taught by Etorre, as Etorre's network monitor allows a unit to send a request for higher bandwidth

on a connection (column 17, lines 35-45). This allows the monitor to dynamically adjust bandwidth within a system and balance traffic within the network.

12. As per claim 22, Brenner further teaches the offering the available network turbo boost triggering options to a user is performed via a graphical user interface (claim 16).

13. As per claim 23, Brenner further teaches the offering the available network turbo boost triggering options to a user is performed via a textual user interface (paragraph 20, where a screen may be displayed to retrieve user configuration).

14. As per claim 24, Brenner teaches a computer program product for providing a network turbo boost service, the computer program product comprising:

a storage medium readable by a processing circuit and storing instructions for execution by the processing circuit for performing a method comprising:

receiving a set of one or more available network turbo boost triggering options at a user system, where the set of one or more available network turbo boost triggering options include destination addresses for which high speed transfer will be recommended, and one of being notified when a large incoming file is detected, being notified when a large outgoing file is detected, being notified when a destination address is on a list of high transmission rate applications, and being notified when a request is received from an application that typically requires downloading of application code data, where the application that typically requires downloading of application code data includes service packs, and software updates, where the list of high transmission rate applications includes video conferencing sites and gaming sites, and where the



destination addresses include a gaming application address and a video conferencing address (paragraph 20, where the user preferences are made to the server);

selecting one or more of the turbo boost triggering options (paragraph 20, where the user preferences are made to the server);

communicating the selection of the one or more network turbo boost triggering options to a network service provider system (paragraph 20, where the user preferences are made to the server).

Brenner does not expressly teach a network and application based trigger for enacting bandwidth increase. Etorre teaches a management system for a network comprising:

a bandwidth increasing criteria including a network-based trigger and an application-based trigger generated by an application provider system separate from the service provider system, the application-based trigger including a request from the application provider system to initiate the turbo boost service (column 17, lines 29-56, where the management server may request to the connection controller to increase bandwidth within the network).

It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize a separate network device including device triggers such as taught by Etorre in a bandwidth increasing system such as taught by Brenner. Brenner's system generally teaches a network device capable of offering users more bandwidth. Etorre generally teaches a network monitoring device that that may add or delete bandwidth based on network performance (paragraph 85). It would be beneficial in a network system such as that taught by Wong to utilize an external network monitor such as that taught by

Etorre, as Etorre's network monitor allows a unit to send a request for higher bandwidth on a connection (column 17, lines 35-45). This allows the monitor to dynamically adjust bandwidth within a system and balance traffic within the network.

15. As per claim 25, Brenner further teaches receiving is in response to a request from the user system (paragraph 11, where the user request is sent by the user).

16. Claims 2, 4, and 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 7 113 479, Wong and US 6 594 265, Etorre et al as applied to claim 1 above, and further in view of US 2004/0215806, Brenner et al.

17. As per claim 2, neither Wong nor Etorre expressly teaches a user requesting the turbo boost service. Brenner teaches a bandwidth on demand system wherein:

the user-client trigger includes at least one of: detecting that the user has requested the network turbo boost service; detecting an outgoing file that is larger than a pre-selected size; and detecting a file transfer time that is larger than a pre-selected time (paragraph 11, where the server may send the client information regarding the download time and the client may select to temporarily increase the bandwidth to accommodate the download).

It would have been obvious to one of ordinary skill in the art at the time of the invention to include the ability for the user to select whether to increase the bandwidth such as taught by Brenner in a bandwidth on demand system such as that taught by Wong. Wong's system generally allows the network to increase bandwidth in response to a file type. Brenner's system provides similar functionality with the added benefit of allowing the user to decide whether to increase the bandwidth at a minimal cost in response to a

network device suggestion. This would be beneficial in a system such as Wong's, as it would allow the user to have the option to increase the download speed of a program or file at a minimal cost (Brenner, paragraph 11).

18. As per claim 4, neither Wong nor Etorre expressly teaches a user requesting the turbo boost service. Brenner teaches a bandwidth on demand system wherein:

the user-client trigger includes at least one of: detecting that the user has requested the network turbo boost service; detecting an outgoing file that is larger than a pre-selected size; and detecting a file transfer time that is larger than a pre-selected time (paragraph 11, where the server may send the client information regarding the download time and the client may select to temporarily increase the bandwidth to accommodate the download).

It would have been obvious to one of ordinary skill in the art at the time of the invention to include the ability for the user to select whether to increase the bandwidth such as taught by Brenner in a bandwidth on demand system such as that taught by Wong. Wong's system generally allows the network to increase bandwidth in response to a file type. Brenner's system provides similar functionality with the added benefit of allowing the user to decide whether to increase the bandwidth at a minimal cost in response to a network device suggestion. This would be beneficial in a system such as Wong's, as it would allow the user to have the option to increase the download speed of a program or file at a minimal cost (Brenner, paragraph 11).

19. As per claim 14, neither Wong nor Etorre expressly teaches not enacting the bandwidth increase if the user does not respond. Brenner teaches a bandwidth on demand system wherein:

the task is executed without the turbo boost if the user does not respond to the offer to invoke a network turbo boost service for the task within a pre-selected time interval (paragraph 20, where the user station may discard or accept the offer).

It would have been obvious to one of ordinary skill in the art at the time of the invention to include the ability for the user to select whether to increase the bandwidth such as taught by Brenner in a bandwidth on demand system such as that taught by Wong. Wong's system generally allows the network to increase bandwidth in response to a file type. Brenner's system provides similar functionality with the added benefit of allowing the user to decide whether to increase the bandwidth at a minimal cost in response to a network device suggestion. This would be beneficial in a system such as Wong's, as it would allow the user to have the option to increase the download speed of a program or file at a minimal cost (Brenner, paragraph 11).

20. As per claim 15, Wong teaches a method of providing a network turbo boost service, the method comprising:

receiving at a service provider system one or more turbo boost triggering criteria of a plurality of turbo boosts triggering criteria associated with a user (column 5, lines 27-40, where the type of data may determine whether the rate control is turned off);

monitoring at the service provider system a network for a task that meets at least one of the turbo boost triggering criteria (column 5, lines 27-40, where the ARL of the network device may snoop packets to determine what type of data is to be sent);

and invoking the network turbo boost service for the task (column 5, lines 27-40, where if the data type is determined to be high bandwidth, the switch may eliminate the rate control).

Wong does not expressly teach a user requesting the turbo boost service. Brenner teaches a bandwidth on demand system wherein:

if the monitoring results in locating a task that meets the at least one of the turbo boost triggering criteria then transmitting an offer to the user to invoke the network turbo boost service for the task (paragraph 11, where the server may send the client information regarding the download time and the client may select to temporarily increase the bandwidth to accommodate the download); and

invoking the network turbo boost service for the task if the user responds to the offer by requesting that the network turbo boost service be invoked for the task (paragraph 11, where the server may send the client information regarding the download time and the client may select to temporarily increase the bandwidth to accommodate the download).

It would have been obvious to one of ordinary skill in the art at the time of the invention to include the ability for the user to select whether to increase the bandwidth such as taught by Brenner in a bandwidth on demand system such as that taught by Wong.

Wong's system generally allows the network to increase bandwidth in response to a file

type. Brenner's system provides similar functionality with the added benefit of allowing the user to decide whether to increase the bandwidth at a minimal cost in response to a network device suggestion. This would be beneficial in a system such as Wong's, as it would allow the user to have the option to increase the download speed of a program or file at a minimal cost (Brenner, paragraph 11).

Neither Wong nor Brenner expressly teaches a network and application based trigger for enacting bandwidth increase. Etorre teaches a management system for a network comprising:

a bandwidth increasing criteria including a network-based trigger and an application-based trigger generated by an application provider system separate from the service provider system, the application-based trigger including a request from the application provider system to initiate the turbo boost service (column 17, lines 29-56, where the management server may request to the connection controller to increase bandwidth within the network).

It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize a separate network device including device triggers such as taught by Etorre in a bandwidth increasing system such as taught by Wong or Brenner. Wong's system generally teaches a network device including a rate control unit. Brenner's system generally teaches a network device capable of offering users more bandwidth. Etorre generally teaches a network monitoring device that that may add or delete bandwidth based on network performance (paragraph 85). It would be beneficial in a network system such as that taught by Wong to utilize an external network monitor such as that

taught by Etorre, as Etorre's network monitor allows a unit to send a request for higher bandwidth on a connection (column 17, lines 35-45). This allows the monitor to dynamically adjust bandwidth within a system and balance traffic within the network.

21. As per claim 16, Wong teaches a method of providing a network turbo boost service, the method comprising:

receiving at a service provider system an at least one turbo boost automatic triggering criteria of a plurality of turbo boost automatic triggering criteria and one or more turbo boost offer triggering criteria of a plurality of turbo boost offer triggering criteria associated with a user (column 5, lines 27-40, where the type of data may determine whether the rate control is turned off);

monitoring at the service provider system a network for a task that meets one of an at least one turbo boost offer triggering criteria of the plurality of turbo boost offer triggering criteria and an at least one turbo boost automatic triggering criteria of the plurality of turbo boost automatic triggering criteria (column 5, lines 27-40, where the ARL of the network device may snoop packets to determine what type of data is to be sent);

invoking the network turbo boost service for the task, wherein the turbo triggering criteria includes one of when a large incoming file is detected; when a large outgoing file is detected, when a destination address is on a list of high transmission rate applications and when a request is received from an application that requires downloading of application code data (column 5, lines 27-40, where if the data type is determined to be high bandwidth, the switch may eliminate the rate control); and

if the monitoring results in locating a task that meets the at least one turbo boost automatic triggering criteria of the plurality of turbo boost automatic triggering criteria then invoking the network turbo boost service for the task that meets the at least one automatic triggering criteria (column 5, lines 27-40, where if the data type is determined to be high bandwidth, the switch may eliminate the rate control).

Wong does not expressly teach a user requesting the turbo boost service. Brenner teaches a bandwidth on demand system wherein:

if the monitoring results in locating a task that meets the at least one turbo boost offer triggering criteria then transmitting an offer to the user to invoke the network turbo boost service for the task that meets the at least one turbo boost offer triggering criteria (paragraph 11, where the server may send the client information regarding the download time and the client may select to temporarily increase the bandwidth to accommodate the download); and

invoking the network turbo boost service for the task if the user responds to the offer by requesting that the network turbo boost service be invoked for the task (paragraph 11, where the server may send the client information regarding the download time and the client may select to temporarily increase the bandwidth to accommodate the download).

It would have been obvious to one of ordinary skill in the art at the time of the invention to include the ability for the user to select whether to increase the bandwidth such as taught by Brenner in a bandwidth on demand system such as that taught by Wong. Wong's system generally allows the network to increase bandwidth in response to a file



type. Brenner's system provides similar functionality with the added benefit of allowing the user to decide whether to increase the bandwidth at a minimal cost in response to a network device suggestion. This would be beneficial in a system such as Wong's, as it would allow the user to have the option to increase the download speed of a program or file at a minimal cost (Brenner, paragraph 11).

Neither Wong nor Brenner expressly teaches a network and application based trigger for enacting bandwidth increase. Etorre teaches a management system for a network comprising:

a bandwidth increasing criteria including a network-based trigger and an application-based trigger generated by an application provider system separate from the service provider system, the application-based trigger including a request from the application provider system to initiate the turbo boost service (column 17, lines 29-56, where the management server may request to the connection controller to increase bandwidth within the network).

It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize a separate network device including device triggers such as taught by Etorre in a bandwidth increasing system such as taught by Wong or Brenner. Wong's system generally teaches a network device including a rate control unit. Brenner's system generally teaches a network device capable of offering users more bandwidth. Etorre generally teaches a network monitoring device that that may add or delete bandwidth based on network performance (paragraph 85). It would be beneficial in a network system such as that taught by Wong to utilize an external network monitor such as that

taught by Etorre, as Etorre's network monitor allows a unit to send a request for higher bandwidth on a connection (column 17, lines 35-45). This allows the monitor to dynamically adjust bandwidth within a system and balance traffic within the network.

22. Claim 17 is substantially the same as claim 15, directed toward a system rather than a method. Wong teaches a system as well as a method (abstract). Claim 17 is therefore rejected under the same basis as claim 15.

23. As per claim 18, Wong further teaches the network is the Internet (column 1, lines 13-15).

24. As per claim 19, Wong further teaches the network is a broadband network (column 1, lines 30-35).

25. Claim 20 is substantially the same as claim 15, directed toward a computer program product rather than a method. Wong teaches that the method is enacted on a computer system, which inherently includes a programmed device, as is well known in the art (abstract). Claim 20 is therefore rejected under the same basis as claim 15.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to THOMAS RICHARDSON whose telephone number is (571) 270-1191. The examiner can normally be reached on Monday through Thursday, 8am-5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on (571) 272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TR  
/William C. Vaughn, Jr./  
Supervisory Patent Examiner, Art Unit 2444